

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

FERMIN CORTEZ, on behalf of
themselves and all other similarly
situated individuals, et al.,

Plaintiffs,

V.

NEBRASKA BEEF, INC., and
NEBRASKA BEEF, LTD.,

Defendants.

8:08CV90

ORDER

DAVID CHUOL, on behalf of himself
and all other similarly situated
individuals,

Plaintiff,

V.

NEBRASKA BEEF, Ltd.,

Defendant.

8:08CV99

ORDER

This matter is before the court following a pretrial conference in this case in preparation for trial on May 3, 2011. Pursuant to the hearing, the court orders as follows:

1. Revised jury instructions will be submitted by the court to the parties within five days of the date of this order.
2. Plaintiffs shall file a brief, if they so choose, discussing the issue of unique versus non-unique gear/equipment and how such differences, if any, should be handled in the jury instructions. Plaintiffs shall have five days from the date of this order to submit their brief; defendants shall have five days thereafter to submit a brief in response.
3. The parties will provide interpreters at their own expense.
4. Defendants will permit Dr. Miracle to conduct on-site testing relating to the recent testing performed by Dr. Fernandez. Such testing shall occur on April 19, 2011. Plaintiffs

shall file their supplemental expert designation for Dr. Miracle by April 25, 2011. Plaintiffs shall make Dr. Miracle available for deposition on April 27 or 28, 2011. Dr. Miracle's additional analysis may include retracing Dr. Fernandez's recently disclosed on-site analysis, confirming or rejecting the resulting additionally disclosed data and analysis, and reviewing late produced records.

5. The plaintiffs currently have a list of 63 class witnesses, nine of whom are so-called "newly named" witnesses (identified as class witnesses after the close of discovery). By close of business this Friday, April 15, 2011, plaintiffs' counsel shall reduce this number and submit a list of 30 class witnesses from which no more than 20 may be called at trial. Of these thirty, if any of them are "newly named" witnesses, plaintiffs shall make these witnesses available on April 27 or 28, 2011, to the defendants for the purpose of taking depositions, if the defendants choose to do so. Any objections to the plaintiffs' new list of class witnesses shall be filed with the court by April 22, 2011.

6. The parties have recently disclosed non-class witnesses who may be called for trial. The listed non-class witnesses include individuals who may have been identified during discovery but were not disclosed as potential witnesses during discovery. The parties must finalize the list of witnesses who will or may be called to testify by April 15, 2011. Non-class witnesses who were not identified as potential witnesses during discovery will not be allowed to testify without leave of court. Requests for leave to testify or objections to non-class witnesses must be filed by April 22, 2011.

7. The defendants shall not attempt to communicate with class members outside the presence of counsel for the plaintiffs.

8. In terms of trial logistics:

- a. The court will call approximately thirty jurors. Each side will receive no less than three strikes.
- b. Each side will receive thirty minutes for voir dire.
- c. Each side will receive approximately one hour for opening arguments.
- d. The court is putting the parties on the clock for trial. Each side will receive 42.5 hours of trial time, including voir dire and opening statements. The court will generally try this case from 9:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., with the exception of the morning of May 17, 2011, when court will begin at 1:00 p.m.
- e. The Clerk of Court shall mail the parties' special questionnaire to jurors forthwith. The court will request the jurors to return the special questionnaires on or before April 20, 2011. As soon as they are received, the answers shall be faxed to the lead attorney for the plaintiffs and for the defendants.

- f. Verdict forms shall be submitted at the convenience of the parties, but not later than three days prior to the end of trial.
- g. Trial briefs shall be submitted five days before trial.
- h. The parties have agreed to give 48 hours' notice to one another before calling witnesses for their respective case in chief. Additionally, the defendants have designated three in-court representatives.

SO ORDERED.

DATED this 12th day of April, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Judge